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Human rights situations that require the Council's attention

Written statement* submitted by the Federacion de Asociaciones de Defensa y Promocion de los Derechos Humanos, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 August 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The situation of Saharawi political prisoners

Currently over 50 Saharawi political prisoners are held in several Moroccan prisons and in the occupied territories of Western Sahara. The conditions of the prisons where Saharawi political prisoners are held are abhorrent and the ill treatments and torture continue on a daily basis against them. The prisons are known for their overcrowded cells, lack of adequate ventilation of the cells, the unsanitary conditions, the insufficient food and lack of the basic nutrients. The visits of their families are often denied at the entry as well as the phone calls. Medical assistance is denied to most of them and in the cases they receive some kind of medical attention it is inadequate, insufficient and in some cases the medicines that they receive are completely unrelated to the illnesses they have.

Overmedication is also applied having in one case a prisoner received 18 different medicaments, among them 3 different antibiotics with contrary effects. When some kinds of blood tests, X-rays or other analysis are made the results are not transmitted to the prisoner, his family or lawyer. The abusive use of X-Rays is also very common.

During 2015over 40 prisoners made hunger strikes in protest of the ill treatment they are subjected to. Mr. Abdallahi Boukioud was in hunger strike during 67 days after which he was forced fed.

The entire prison population (Moroccan and Saharawi, political prisoners and common criminals) of Dakhla prison made a 48h hunger strike on 29th and 30th of September after the death of the Saharawi political prisoner Hassanna El Wali, who died due to gross medical negligence.

Fundación Sahara Occidental, which attends trials of Saharawi Political Prisoners for over 10 year has records and reports of more than 40 observers that attended trials of Saharawi political prisoners. These reports show that the trials and judicial processes of the Moroccan authorities against the Saharawi political prisoners are illegal and extraterritorial, the accusations are never proven and the judges never allow the evidences of innocence.

The recent case of Mr. Mbarek Daoudi is the perfect example of these illegal procedures. Mr. Daoudi was detained, tortured and interrogated and afterwards waited over 18 months for a trial (which is a violation of the Moroccan law), he was trialled and sentenced to 3 months imprisonment, but was not set free although he already was in prison with the common prison population for over 18 months. After the 3 months sentence he was sentenced to an additional three months which ended in early August, but he is still in prison.

Fundación Sahara Occidental attended the trial of the Gdeim Izik Group in February 2013, with 4 observers that concluded that the Justice Administration, notwithstanding the Human Rights norms and international instruments, rectified by Morocco and, although holding a strong police and judicial contingent, did not take into account, along the judicial process, the current law, therefore weakening, in judicial seat, dependencies and institutions, the appliance of legislation, this process having proved to be null and void.

The Military Court, in charge of this procedure, which carried out the trial's stages and decision, in Rabat, capital of the Morocco State, is an extraterritorial court. Its competence to judge the facts and acts produced outside the Reign of Morocco territory, makes it incompetent, according to the United Nations Security Council's resolutions, once these facts, are circumscribed within Western Sahara, a non-autonomous territory, military and illegally occupied by Morocco (the "occupant country"), contrary to international law and therefore, outside the sovereignty, competence and jurisdiction of this same Rabat's Military Court, the process developed in itself being null and void.

The Rabat Military Court is incompetent under the constitutional and criminal law, according to article 127, of the recent-ratified Constitution of the Reign of Morocco, dated from 29th July 2011, being in fact an exceptional court, prescript and forbidden, the developed process being of radical nullity. The Rabat Military Court, presided by an ordinary judge "Zehhaf", judged, violating the application law, 25 Saharawi civilians, not holding the necessary jurisdictional faculties.

The fact that the prisoners were sexual violated and suffered tortures, as means of obtaining confessions, which took place at the Royal Gendarmerie police premises and amid the military and pro-military corps which "in fact" operate in the Western Sahara, inflicted during weeks or even months, and whose wounds were exhibited in court, during the plenary and instruction phases, with many denounces, which were never investigated, as it was denied, including the oral phase of the proving of such acts, and the possibility of their validity, therefore giving place to fragility of the defence rights.

The oral testimonies were registered, years upon the taking place of the acts, along with the inappropriate /unjustified prolonging of detention, in police and penitentiary premises, amid tortures, physical and psychological coactions, postponing the trials and keeping the accused under protective imprisonment, contrary to international conventions and the Morocco law.

The inexistence within the process of the identity and circumstances on the dead victims, inexistence of forensic autopsies (an important item to determinate the cause of death, the place, moment and circumstances); inexistence of fingerprint proofs and white weapons analysis, surprisingly found at place where the alleged acts took place; inexistence of morphologic studies and identification in films, consider not valid, in absolute, the dictated sentence. And once that none of the accused are identified in the presented films, the instruction and supposed accusation proofs obtained in the instruction phase and presented at the plenary, they are totally unknown regarding the accused, together with the manner the King's Procurator presented and formulated the accusation.

This defective instruction, made the King's Procurator, at the Plenary, the very same day the trial hearings begun, to present, in a suppressive manner (in non-accomplishment with the previewed legal terms) the inclusion in the process of nine ocular witnesses of the acts and whose statements could bring some light on the authors identification and the circumstances of the crime perpetration. Hawadi Radouan, the first witness, declared he was present as an auxiliary corps, on the 13th February, at 13.15, local time, not having recognized any of the accused. The court's president, in the exercise of his stated conferred powers, forbids the plenary of hearing the rest eight witnesses. Therefore, impeding the defence of the possibility of proving the accused had had no participation in the violent acts.

The observer mission proved numerous vices amid the proceedings, which ought to have provoked null and void, from the instruction phase in concrete and regarding the law applied within the territory:

- The underlined absence (and denounced repeatedly along the whole trial) of accusation proofs presented by the King's General-Procurator and the Judge of Instruction, make the whole process non-valid, as the latter did not exercise their lawful guarantee function, thus violating the effective judicial protection principle (in accordance with its criminal system) and the presumption of innocence, accepting the police statements obtained, as declared by all the witnesses, under unimaginable forms of torture, in the absence of any real proof along all the process.

- Absence of identification of the held forces by the security guards, holding incriminatory proofs in the instruction phase itself; signifying that they were arbitrarily imprisoned and by the fact of being Saharawis, of associations' members, in the defence of Human Rights, members of the Gdeim Izik negotiation commission or for opinions on the Western Sahara self-determination, having been taken away unto detention centres before, during and upon the Gdeim Izik camp, with no connection with the mentioned acts, having been kept for days under unaccounted whereabouts.

- Violation of the right of defence, through the systematic refusal of proof of innocence, both during the instruction phase as during the plenary, impeding in concrete, the possibility of proving innocence, having been specially grotesque the proof presentation denials, insistently demanded by the defence, throughout all the plenary progress, as doctors for proving torture and important witnesses, such as the Minister of the Interior of Morocco and the MP (member of parliament) Gajmoula Ment Abbi.

- Absence of lawyers during detentions, at the police and judicial quarters.

- Absence of communication towards the prisoners' families.

- The use of violent police methods, tortures and physical coercion at the judicial quarters, carried out in the presence of the instruction judge Bakkal Mohammad, deceased, to obtain signatures in fingerprint, at the end of the version of the guilt confessions.

During the oral testimonies phase, the courts intended to annul, at any moment, and avoid political statements; and only were allowed, upon a strong defence from lawyers and a closed meeting among the court and the latter. The expressions of political opinions which are carried out during the exercise of civil rights, recognized by the international treaties, subscribed by Morocco, are hindered.

The state of terror which witnesses mention, the reports on torture and repression, reported during the plenary, violate the Morocco criminal law, which is applied to Western Sahara inhabitants, the international agreements subscribed by Morocco, as the International Convention on the Elimination of All Forms of Racial Discrimination (1966), the international Agreements on Civil, Political, Economic, Social and Cultural Rights (1966), the Agreement for the Prevention and Sanction of the Crime of Genocide and Crime of Tortures (ratified by Morocco in1950).

The international community should intervene for the immediate release of all Saharawi Political Prisoners.

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